The Malayan Law Journal

1974

BEING

REPORTS OF MALAYSIAN AND SINGAPORE CASES DETERMINED IN THE HIGH COURTS, THE FEDERAL COURT OF MALAYSIA, THE COURT OF APPEAL AND THE COURT OF CRIMINAL APPEAL OF SINGAPORE, AND THE PRIVY COUNCIL.

PRIVY COUNCIL REPORTS

WONG THIN YIT v. MOHAMED ALI

[P.C. (Lord Diplock, Lord Guest, Viscount Dilhorne, Lord Kilbrandon & Lord Salmon) October 24, 1973]
[Privy Council Appeal No. 12 of 1972]

Negligence — Appeal — Finding of fact by trial judge — Whether appellate court bound by finding of fact.

Privy Council — Practice — Concurrent findings of facts in lower courts.

This was an appeal from the Federal Court of Malaysia ([1971] 2 M.L.J. 175) which dismissed the appeal of the appellant from the judgment of the High Court in Malaya in which the learned judge had held that the appellant was entirely to blame for a road accident resulting in injuries to the respondent.

Held: it is not the practice of the Judicial Committee of the Privy Council to review concurrent findings of facts in the lower courts. In this case although the appellant had tried to argue that the circumstances described in the finding of fact either do not amount to negligence or justify and require the court to find the respondent contributorily negligent, that argument was quite untenable and therefore the appeal must be dismissed.

PRIVY COUNCIL.

John Archer for the appellant.

E. Cotran for the respondent.

Lord Diplock (delivering oral judgment of the Board): This is an appeal from the Federal Court of Malaysia in a running-down action. That court dismissed an appeal from the judgment of the High Court in Malaya at Ipoh in which the learned judge awarded to the respondent, an infant, damages for negligence amounting to 32,000 dollars.

The respondent was one of three boys who, on the 21st February 1969, were walking along a road (the Degong/Teluk Anson Road) when, as was found as a fact by the learned judge, and this finding was upheld by the majority of the Federal Court, somewhere very near the left edge of the road — either on the grass verge or on the road — he was run into from the rear by the appellant on his motor cycle. It was broad daylight; there was no other traffic. That finding of fact was concurred in by the majority of the Federal Court and, needless to say, upon that finding the appellant was held to be 100 per cent negligent.

It is not the practice of this court to review concurrent findings of fact from courts in Malaysia. Counsel for the appellant has thus been driven to argue that the circumstances described in that finding of fact either do not amount to negligence or justify and require the court to find the respondent contributorily negligent. That argument in their Lordships' view is quite untenable.

Their Lordships will report to the Head of Malaysia their opinion that this appeal ought to be dismissed with costs.

Appeal dismissed.

Solicitors: *Wilson Freeman; Cooper, Bake, Fettes, Roche & Wade.*

MAHADEVAN v. ANANDARAJAN & ORS.

[P.C. (Lord Diplock, Lord Guest, Viscount Dilhorne, Lord Kilbandron and Lord Salmon) November 22, 1973]
[Privy Council Appeal No. 22 of 1971]

Administrative Law — Expulsion of student from school — Natural justice — Person charged with making decision should act fairly.

Education — School discipline — Expulsion of student for misconduct — Education (School Discipline) Regulations, 1959, reg. 8.

The appellant had been expelled from a school by the 1st respondent for alleged misconduct. The question that arose was whether the procedure adopted by the 1st respondent as headmaster in reaching his decision to expel the appellant was contrary to the rules of natural justice. In the High Court it had been held that the appellant had not been given an adequate opportunity to be heard as the respondent had not at the time of questioning the appellant informed him specifically that he would be expelled if he did not provide a satisfactory explanation. On appeal to the Federal Court it was held by a majority ([1971] 2 M.L.J. 8) reversing the decision of the High Court, that the procedure adopted by the headmaster was in accordance with the rules of natural justice. The appellant appealed to the Privy Council.

Held: (1) there was no substance in the contention that the rules of natural justice required the headmaster to tell the appellant specifically at the interview that he intended to expel him unless the appellant gave a satisfactory explanation of the misconduct. All that those rules require is that, in deciding whether to expel the appellant he should act fairly by letting him know what conduct was complained of and giving the appellant an opportunity of proferring any explanation or excuse he wished to part forward;

(2) in relation to such administrative matters as the expulsion of a pupil from a school it would be quite inappropriate to model the procedure on that of a criminal trial. All that natural justice requires is that the person charged with making the decision should act fairly. What is fair depends on the circumstances and is a matter of commonsense;

(3) in this case there was no sort of unfairness in the course adopted by the headmaster in relation to the appellant and the appeal should therefore be dismissed.

PRIVY COUNCIL.

S. P. Seenivasagam, J. Nadchatiram and *N. Segaram* for the appellant.

Rober Gatehouse Q.C. and *David Vaughan* for the respondents.

Lord Diplock (delivering judgment of the Board): Regulation 8 of the Education (School Discipline) Regulations 1959, of Malaysia, empowers a head teacher to expel a pupil whenever it appears to his satisfaction to be necessary or desirable for the purpose of maintaining discipline or order in the school that the pupil should be expelled. Acting under this power, the first respondent, K. Anandarajan, as headmaster of King George V School, Seremban, on 4th May 1968, expelled the appellant who was then seventeen years old. It is not disputed that, in using this power of expulsion, the headmaster was required to act in accordance with natural justice. The only issue remaining in this case is whether or not he did.

As the action was originally framed, the appellant alleged that the headmaster had acted maliciously and without any lawful reasons in expelling the appellant from the school, but this allegation was rejected by the judge, Abdul Hamid J., who tried the action in the High Court in Malaya, and has not been further pursued. He found as a fact that the headmaster had acted *bona fide* and had good reason for expelling the appellant. There remained the alternative allegation that, notwithstanding this, the procedure adopted by the headmaster in reaching his decision to expel the appellant was contrary to the rules of natural justice.

The relevant facts, as found by the judge and accepted by the Federal Court of Malaysia, can be stated briefly.

On 2nd April 1968, as a result of reports which he had received about the misbehaviour of the appellant and two other boys at a "talentime" show held at the school on the previous day, the headmaster interviewed the three culprits and invited them to explain their conduct. He then saw the appellant alone and taxed him with a number of previous instances of misconduct and asked him to explain them. After hearing the appellant's explanations and excuses he then considered whether the cumulative effect of the appellant's misconduct was such as to make it necessary or desirable for the purpose of maintaining discipline in the school that the appellant should be expelled. Before reaching a final decision he thought it right to seek the views of other members of the teaching staff who had known the appellant longer than he had, as he had only been appointed to the school as headmaster some three months before. Although he had reached his final decision to expel the appellant on 10th April 1968, the notification to the appellant of his expulsion was delayed until the 4th May owing to the intervening absence of the headmaster from the school on official duties.

At the interview on the 2nd April the headmaster did not specifically inform the appellant that he intended to expel him unless he could provide a satisfactory explanation for his misconduct. Indeed, he could hardly have done so, as he had not at that time reached a final decision that expulsion was the only appropriate punishment. It was, however, found as a fact by the judge that, at the time of that interview, the appellant had reason to believe that he might be expelled, and indeed that the headmaster had told the appellant that he would probably expel him or take some action or something to that effect.

Nevertheless the judge held that this was not enough to satisfy the requirements of natural justice and that it was the duty of the headmaster at the time of questioning the appellant to inform him specifically that he would be expelled if he did not provide a satisfactory explanation.

Upon this sole ground, the judge made a declaration that the order of expulsion of the appellant was null and void and of no effect.

On appeal to the Federal Court of Malaysia, that court by a majority (Suffian Ag. L.P. and Gill F.J., Ali F.J. dissenting) reversed this decision and held that the procedure adopted by the headmaster was in accordance with the rules of natural justice. Ali F.J. was in favour of affirming the judgment of the High Court, for the reason given by Abdul Hamid J.

On appeal to the Judicial Committee, the appellant has relied mainly upon the ground which commended itself to Abdul Hamid J. and Ali F.J., but he also seeks to support the conclusion which they reached that the rules of natural justice had been contravened on two additional grounds. The first is that the appellant should have been given an opportunity to consult his parents before answering the headmaster's questions at the interview on 2nd April 1968; the second is that, after that interview and before reaching his final decision on 10th April, the headmaster had taken into account another instance of misconduct by the appellant which had occurred before he had become headmaster and which was reported to him for the first time when he was obtaining the views of his fellow teachers.

In their Lordships' view, there is no substance in the contention that the rules of natural justice required the headmaster to tell the appellant specifically at the interview on 2nd April that he intended to expel him unless the appellant gave a satisfactory explanation of the misconduct which was the subject of the interview. All that those rules require is that, in deciding whether to expel the appellant he should act fairly by letting him know what conduct was complained of and giving the appellant an opportunity of proffering any explanation or excuse he wished to put forward.

The appellant, as the learned trial judge found, knew at the time of the interview that he ran the risk of expulsion. In their Lordships' view, the suggestion that anything more than this was required by the rules of natural justice is wholly untenable.

The alternative suggestion that this youth of seventeen should not have been questioned about his misconduct at school without an opportunity of first consulting his parents does not appear to have loomed large in the argument in the Federal Court and is not

specifically referred to in the judgments. In their Lordships' view, it too is without substance. The appellant was old enough to know what excuses, if any, he had for what he had done. No one knew better. All that the rules of natural justice required was that he should be given an opportunity of stating them.

Finally, as respects the report of previous misconduct which came to the attention of the headmaster after the interview of 2nd April and before he had finally decided to expel the appellant, the appellant, at the time this misconduct was discovered, had been given a full opportunity to explain it. It was a straightforward instance of disobedience of the same general kind as that with which he had been taxed at the interview. In their Lordships' view, as the appellant had already been given an opportunity to explain this piece of misconduct at the time that it occurred, there was no obligation upon the headmaster to put it to him again and invite a further explanation.

In relation to such administrative matters as the expulsion of a pupil from a school it would be quite inappropriate to model the procedure on that of a criminal trial. All that natural justice requires is that the person charged with making the decision should act fairly. What is fair depends on the circumstances and is a matter of commonsense. Their Lordships consider that there was no sort of unfairness in the course adopted by the headmaster in relation to the appellant. They will accordingly advise the Head of Malaysia that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Lovell, White & King; Stephenson Harwood & Tatham.*

GOVERNMENT OF MALAYSIA v. LIONEL

[Privy Council (Lord Wilberforce, Viscount Dilhorne, Lord Simon of Glaisdale, Lord Solomon and Sir Gordon Wilmer) November 22, 1973]
[Privy Council Appeal No. 11 of 1972]

Administrative Law — Public servant — Disciplinary action taken under General Orders, Chapter D, reg. 32 for acts of alleged indiscipline — Termination of service by Chief Police Officer after representation — Federal Constitution, arts. 132, 135 & 144.

In this case the respondent had been appointed in 1953 as a temporary clerk/interpreter in the Police Clerical Service. His appointment was on the terms that his engagement would be "terminable at one month's notice or on payment of one month's salary in lieu of notice on either side" and that in so far as they were relevant to the duties of his appointment and to his employment as a public servant, he would "throughout such employment comply with the provisions of the General Orders applicable to his employment within the Federation". In 1962 disciplinary action was taken against him by the Chief Police Officer, Johore, under regulation 32 of the General Orders, Chapter D, for acts of alleged indiscipline. He was required to exculpate himself but his representations were not accepted and the Chief Police Officer informed him by letter that in effect he had failed to exculpate himself and that it had been decided to terminate his services as a temporary clerk. The respondent appealed to the Public Services Commission for reconsideration of his case but his appeal was dismissed. In 1966 the respondent sought a declaration that his purported dismissal by the Chief Police Officer was void, inoperative and of no effect. The High Court dismissed the action but on appeal to the Federal Court, the appeal was allowed and a declaration as sought made ([1971] 2 M.L.J. 172). The Government appealed to the Yang Dipertuan Agung and the appeal was referred to the Privy Council.

Held: (1) members of the general public service obtained a degree of security of tenure under the Constitution of their appointments and it is not correct to say that they were guaranteed security of tenure under Part X of the Constitution;

(2) under the laws of Malaysia a distinction is drawn between dismissal and termination of services and there is nothing in the Constitution which affects the right of the Government to terminate temporary employment in accordance with the terms of the engagement. The Board could not agree with the Federal Court that Regulation 36 of the General Orders was invalid and inconsistent with the Constitution;

(3) the learned trial judge in this case was right in holding that the respondent had not been dismissed but that his services were validly terminated in accordance with the terms of his appointment.

Case referred to:-

(1) *Surinder Singh Kanda* v. *Government of Federation of Malaya* [1962] M.L.J. 169.

PRIVY COUNCIL.

Robert Gatehouse and *Nicholas Lyell* for the appellant.

R. Neville Thomas for the respondent.

Viscount Dilhorne (delivering judgment of the Board): On the 1st October 1953 the respondent was appointed a temporary clerk/interpreter in the Police Clerical Service. His appointment was on the terms that his engagement would be "terminable at one month's notice, or on payment of one month's salary in lieu of notice on either side" and that in so far as they were relevant to the duties of his appointment and to his employment as a public servant, he would "throughout such employment, comply with the provisions of the General Orders applicable to" his "employment with the Federation of Malaya".

On the 30th April 1962 disciplinary proceedings were instituted against him under Regulation 32 of Chapter D of the General Orders issued under the authority of the Yang Dipertuan Agung in accordance with Article 132(2) of the Constitution of the Federation of Malaysia. That Regulation provides that before the Disciplinary Authority imposes any penalty on an officer not on the pensionable establishment who is in Division III or IV of the Public Service, the officer concerned must be given an adequate opportunity to exculpate himself. Regulation 31 states that the "Disciplinary Authority" means in relation to any officer the Commission whose jurisdiction extends to the Service of which such officer is a member in accordance with the provisions of Part X of the Constitution. In relation to the respondent the Disciplinary Authority was the Public Services Commission set up under Article 139(1) of the Constitution. It appears that in fact the disciplinary proceedings were commenced by the Chief Police Officer, Johore Bahru, after, it appears, consultation with the officer of the Public Services Commission who dealt with disciplinary matters.